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Department of Water Resources

DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA	)	Subcase 36-00026 and 36-00027
	)	
Case No. 39576	)	ORDER GRANTING MOTIONS TO
	)	FILE LATE OBJECTION and FOR
	)	SUMMARY JUDGMENT and
	)	PRELIMINARY SPECIAL MASTER'S
	)	REPORT

Findings of Fact

36-00026

Lloyd Brown, 2802 South, 850 East, Route 1, Hagerman, Idaho 83332, filed a *Notice of Claim to a Water Right* under 36-00026 on August 26, 1988, claiming 2.4 cfs from Billingsley Creek via the Bell Ditch for stock water and to irrigate 40 acres based on the 1932 *New International* decree. On November 2, 1992, the Director of the Idaho Department of Water Resources filed his *Director's Report for Reporting Area 3 (Basin 36)* recommending 1.05 cfs.

Mr. Brown filed the only *Objection* on May 3, 1993, objecting to quantity. The Director's *Response to Objection*, filed August 31, 1993, proposed no changes to the recommendation. However, in its *Report Regarding Claims to Water Right Nos. 36-00026 and 36-00027*, p. 2, lodged December 6, 1996, IDWR recommended a total quantity of 1.28 cfs for 36-00026.¹

36-00027

Mr. Brown also filed a *Notice of Claim* under 36-00027 on August 26, 1988, claiming .4 cfs from Billingsley Creek via the Buckeye Ditch for stock water and to irrigate the same 40 acres based

¹ The recommended total irrigation diversion requirement of 1.28 cfs is the sum of the on-farm irrigation requirement (1.09 cfs, or approximately .027 cfs/acre) plus the conveyance loss (.19 cfs). See IDWR's *Evaluation of Irrigation Diversion Rate, Water Right Numbers: 36-00026 and 36-00027*, pp. 8-9, lodged December 6, 1996.

on the *New International* decree. The *Director's Report* recommended that the claim be disallowed because the right is "recommended as right no. 36-00026."

Mr. Brown did not file a timely objection in 36-00027, nor did anyone else. Instead, the claim came before the court in a *Settlement Conference Report*, dated March 5, 1996, for 36-00026. As a result of that *Report*, the Presiding Judge entered an **Amended Order of Reference** allowing 36-00027 "to proceed with subcase 36-00026."

IDWR's *Report Regarding Claims to Water Right Nos. 36-00026 and 36-00027*, p. 2, repeated its earlier recommendation for disallowal: "[T]he quantity of water recommended for lands on which water right no. 36-00027 is claimed is accounted for under water right no. 36-00026."² In neither subcase, did IDWR allege abandonment, forfeiture, adverse possession or estoppel.

Hearing

A scheduling conference concerning both subcases was held October 17, 1996, at the SRBA Courthouse in Twin Falls, Idaho. Mr. Brown appeared and represented himself. Charles L. Honsinger appeared for IDWR.

During the hearing, Mr. Brown moved for entry of summary judgment. He asserted that the pleadings show there is no genuine issue as to any material fact and he is entitled to judgment as a matter of law.³

Discussion

New International Decree

In 1932, the United States District Court for the District of Idaho, Southern Division, entered a decree entitled *New International Mortgage Bank v. Idaho Power Company*. Mabel Blackhart was among the various parties adjudicated water rights, "for irrigation, domestic, power and other purposes:"

2.4 [cfs]	Billingsley Creek	March 30, 1884	E.M. Bell Ditch;
.4 [cfs]	Billingsley Creek	Sept. 10, 1884	Buckeye Ditch;
SE¼ of the SW¼ of Sec. 22, Twp. 7 S. R. 13 E. B.M.			

² The combined total quantity of both 36-00026 and 36-00027 equals 2.8 cfs for irrigation of 40 acres. That yields a diversion rate of .07 cfs/acre.

³ At a later status conference held on April 8, 1997, Mr. Brown moved to file a late objection in 36-00027. His motion postured the subcase for resolution because no objection was filed before. Then, Mr. Brown asked that both subcases be considered part of his pending motion for summary judgment.

The *New International* decree stated the quantity of water diverted, but omitted the irrigated acreage for each right. That being the case, the presumption must be that the total quantity of 2.8 cfs was awarded for all 40 acres in the SE¼SW¼ of § 22. Mr. Brown is the successor in interest to Mabel Blackhart.

Law of the Case

The Presiding Judge in the SRBA has decided that previously decreed elements of water rights will be recognized absent proof of abandonment, forfeiture, adverse possession or estoppel. See **Order Adopting Special Master's Recommendation on Summary Judgment**, dated October 15, 1996. That being the law of the case, the quantity element for both 36-00026 and 36-00027 is settled. The total quantity of 2.8 cfs, with two priority dates in 1884, are appurtenant to Mr. Brown's 40 acres in the SE¼SW¼ of § 22. Since quantity was the only element objected to in both subcases, there are no other matters in dispute.

Draft Recommendations

At the request of the Special Master, IDWR prepared draft recommendations for both subcases. The draft recommendations matched Mr. Brown's claims in all major respects, except for purpose of use, irrigation season, points of diversion, remarks and a provision necessary for definition or administration of 36-00026. Mr. Brown advised the court that he initiated changes in points of diversion with the water for both claims now delivered through the same ditch. The other changes in irrigation season, remarks and the provision for definition or administration resulted from prior court holdings. That left only a different purpose of use than claimed.

Mr. Brown claimed year 'round stock water as a purpose of use in both subcases. However, IDWR recommended that stock water use be included only in 36-00026 with the earlier priority date. Such recommendation appears reasonable because both claims cover the same 40 acres and the amount is sufficient. The amount of water recommended for stock water was broken down according to when such use occurs. During the irrigation season, when more water flows through the ditch, the amount for stock water is .05 cfs. During the non-irrigation season, when less water is in the ditch and conveyance losses are higher, the amount for stock water increases to .24 cfs. Because stock water use is incidental to irrigation, the total quantity remains the same as for irrigation alone.

Order Granting Motions

THEREFORE, it is ordered:

1. That Mr. Brown's motion to file a late objection to 36-00027 is **granted**. The court is satisfied that good cause has been shown and the claimant has stated a meritorious position; and
2. That Mr. Browns's motion for entry of summary judgment is **granted**. The pleadings show there is no genuine issue as to any material fact and the claimant is entitled to judgment as a matter of law.

Conclusions of Law

Mr. Brown is entitled to partial decrees adjudicating his water rights under claims 36-00026 and 36-00027 as described in the *Preliminary Special Master's Recommendations for Partial Decrees for Water Rights 36-00026 and 36-00027*.

DATED April 10, 1997.



TERRENCE A. DOLAN
Special Master, Reporting Area 3
Snake River Basin Adjudication

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

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In Re SRBA)
Case No. 39576)
_____)

PRELIMINARY

SPECIAL MASTER'S RECOMMENDATION FOR
PARTIAL DECREE FOR
Water Right 36-00026
Department of Water Resources

NAME & ADDRESS: LLOYD BROWN
2802 S 850 E
HAGERMAN ID 83332

SOURCE: BILLINGSLEY CREEK TRIBUTARY: SNAKE RIVER

QUANTITY: 2.4 CFS

THE QUANTITY OF WATER UNDER THIS RIGHT FOR STOCKWATER USE
SHALL NOT EXCEED 13,000 GALLONS PER DAY.

PRIORITY DATE: 03/30/1884

POINT OF DIVERSION: T07S R13E S11 NWSENE Within GOODING County
SESENE

PURPOSE AND PERIOD OF USE:	PURPOSE OF USE	PERIOD OF USE	QUANTITY
	IRRIGATION	Irrigation Season	2.4 CFS
	STOCKWATER	Irrigation Season	0.05 CFS
	STOCKWATER	Non-Irrigation Season	0.24 CFS

PLACE OF USE: IRRIGATION Within GOODING County
T07S R13E S22 SWSE 40.0
40.0 ACRES TOTAL

USE OF THIS RIGHT WITH RIGHT NO. 36-00027 IS LIMITED TO THE
IRRIGATION OF A COMBINED TOTAL OF 40 ACRES IN A SINGLE IRRIGATION
SEASON.

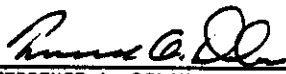
STOCKWATER Within GOODING County
T07S R13E S22 SWSE

STOCKWATER Within GOODING County
T07S R13E S22 SWSE

OTHER PROVISIONS NECESSARY FOR DEFINITION OR ADMINISTRATION OF THIS WATER RIGHT:

THE QUANTITY OF WATER DECREED FOR THIS WATER RIGHT FOR
STOCKWATER USE IS NOT A DETERMINATION OF HISTORICAL BENEFICIAL
USE.

DATED: 4-10-97


TERRENCE A. DOLAN
Special Master
Snake River Basin Adjudication

SPECIAL MASTER'S RECOMMENDATION
Water Right 36-00026

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MAR-6-1997

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Department of Water Resources

In Re SRBA)
Case No. 39576)
_____)

PRELIMINARY

SPECIAL MASTER'S RECOMMENDATION FOR

PARTIAL DECREE FOR

Water Right 36-00027

NAME & ADDRESS: LLOYD BROWN
2802 S 850 E
HAGERMAN ID 83332

SOURCE: BILLINGSLEY CREEK

TRIBUTARY: SNAKE RIVER

QUANTITY: 0.4 CFS

PRIORITY DATE: 09/10/1884

POINT OF DIVERSION: T07S R13E S11

NWSENE
SESENE

Within GOODING County

PURPOSE AND
PERIOD OF USE: PURPOSE OF USE
IRRIGATION

PERIOD OF USE
Irrigation Season

QUANTITY
0.4 CFS

PLACE OF USE: IRRIGATION
T07S R13E S22
40.0 ACRES TOTAL

Within GOODING County
SWSE 40.0

USE OF THIS RIGHT WITH RIGHT NO. 36-00026 IS LIMITED TO THE
IRRIGATION OF A COMBINED TOTAL OF 40 ACRES IN A SINGLE IRRIGATION
SEASON.

DATED: 4-10-97


TERRENCE A. DOLAN
Special Master
Snake River Basin Adjudication

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DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHO

IN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLS

In Re SRBA)

Case No. 39576)
_____)

CERTIFICATE OF MAILING

Water Right(s): 36-00026
36-00027

CERTIFICATE OF MAILING

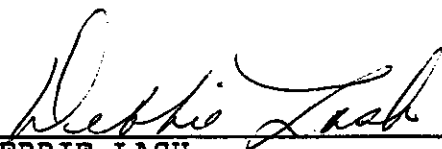
I certify that a true and correct copy of PRELIMINARY SPECIAL MASTER'S REPORT, PRELIMINARY SPECIAL MASTER'S RECOMMENDATION FOR PARTIAL DECREE and NOTICE OF ISSUANCE OF PRELIMINARY SPECIAL MASTER'S REPORT AND RECOMMENDATION were mailed on April 10, 1997, with sufficient first-class postage prepaid to the following:

DIRECTOR OF IDWR
PO BOX 83720
BOISE, ID 83720-0098

CLIVE STRONG
DEP AG OFFICE OF ATTY GEN
STATEHOUSE MAIL
BOISE, ID 83720

LLOYD BROWN
RT 1
HAGERMAN, ID 83332

LLOYD BROWN
2802 S. 850 E.
HAGERMAN, ID 83332


DEBBIE LASH
Deputy Clerk

CERTIFICATE OF MAILING

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04/10/97

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DISTRICT COURT - SRBA
TWIN FALLS CO., IDAHOIN THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TWIN FALLSIn Re SRBA)
Case No. 39576)
_____)NOTICE OF ISSUANCE OF
PRELIMINARY SPECIAL MASTER'S
REPORT AND RECOMMENDATIONWater Right(s): 36-00026
36-00027

On April 10, 1997, Special Master TERRENCE A. DOLAN lodged a PRELIMINARY SPECIAL MASTER'S REPORT and a PRELIMINARY SPECIAL MASTER'S RECOMMENDATION pursuant to SRBA Administrative Order 1 section 9 (f).

These documents are served only on parties to the subcase. They are not served on the Presiding Judge. Parties to this subcase may file a Motion to Alter or Amend with the Special Master, but must do so before April 24, 1997.

DATED April 10, 1997.


DEBBIE LASH
Deputy Clerk